



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Zero Manufacturing Company--
Request for Reconsideration

File: B-224923.2

Date: October 28, 1986

DIGEST

Prior action dismissing a protest against an agency's affirmative determination of responsibility is affirmed where the General Accounting Office (GAO) again finds nothing in the protester's original submission which would reasonably constitute an allegation that the solicitation contained definitive responsibility criteria which were not met so as to provide for GAO's review.

DECISION

Zero Manufacturing Company (Zero) requests reconsideration of our October 8, 1986 dismissal of its protest against the award of a contract to Royce Mechanical Systems (Royce) under solicitation No. F41689-86-R-0074, issued by the Department of the Air Force. We dismissed the protest in accordance with our Bid Protest Regulations, 4 C.F.R. § 21.3(f) (1986), which, among other things, provides that this Office will not review an agency's affirmative determination of a prospective contractor's responsibility absent a showing of possible fraud or bad faith on the part of contracting officials or an allegation that definitive responsibility criteria contained in the solicitation were not met. We limit our review function to these exceptional cases because an agency's determination that a firm is capable of performing a contract is largely based on subjective judgments not susceptible to reasoned review. Id. Although Zero's protest submission urged that Royce lacked the successful experience and production and financial capability necessary to meet the government's requirements--a challenge to its responsibility as a prospective contractor--we found nothing in that submission that would provide for our review under the limited exceptions noted above.

Zero now requests reconsideration of our dismissal action on the apparent ground that its protest submission complaining of Royce's nonresponsibility constituted an allegation that

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definitive responsibility criteria set forth in the solicitation were not met. We find no merit in the firm's position.

A definitive responsibility criterion is an objective standard relevant to an offeror's ability to perform a particular contract that must be possessed as a prerequisite to award. C.R. Daniels, Inc., B-221313, Apr. 22, 1986, 86-1 CPD ¶ 390. In effect, the criterion represents the agency's judgment that an offeror's ability to perform in accordance with the specifications for that procurement must be measured not only against the traditional and subjectively evaluated factors, such as adequate facilities and financial resources, but also against a more specific requirement, compliance with which at least in part can be determined objectively. Nations, Inc., B-220935.2, Feb. 26, 1986, 86-1 CPD ¶ 203; Clausing Machine Tools, B-216113, May 13, 1985, 85-1 CPD ¶ 533. Thus, for example, where a definitive responsibility criterion involves corporate experience, it typically requires a particular type or certain level of experience which can be measured objectively, such as a requirement that the offeror have 3 years of particular experience. See, e.g., Continental Services Co., B-187700, Jan. 25, 1977, 77-1 CPD ¶ 53.

We have again examined Zero's original protest submission and continue to find nothing in it which would reasonably constitute an allegation that the solicitation contained definitive responsibility criteria which were not met. Rather, the provisions of the solicitation to which Zero refers and which the firm contends Royce cannot meet are specifications and general requirements concerning the awardee's ability to perform which are encompassed by the contracting officer's subjective responsibility determination. C.R. Daniels, Inc., B-221313, supra. For example, a specification requirement that components will be "standard products" is only a performance requirement--it requires the contractor to furnish an end product (here a blast facility) that has such components. Although an offeror's ability to meet such a requirement should be considered as part of the overall responsibility determination, the provision itself does not establish a standard, such as a 3-year experience requirement, that can be applied objectively rather than subjectively. Accordingly, we remain of the belief that no basis of protest has been presented which would allow for our review of the Air Force's determination that Royce is responsible for this procurement. See Kitco, Inc., B-221386, Apr. 3, 1986, 86-1 CPD ¶ 321.

Our prior dismissal is affirmed.

for Seymour Sfor
Harry R. Van Cleve
General Counsel